

Department of Energy

§910.360

CFR 200.69 is expanded for DOE to include for-profit organizations in addition to states, local governments, Indian tribes, institutions of higher education (IHE), and nonprofit organizations.

(b) A for-profit organization is defined as one that distributes any profit not reinvested into the business as profit or dividends to its employees or shareholders.

(c) Subpart D of 2 CFR part 910 contains specific changes to 2 CFR part 200 that apply only to For-Profit Recipients and, unless otherwise specified, subrecipients. In some cases, the coverage in Subpart D will replace the language in a specific section of 2 CFR part 200.

§910.352 Cost Principles.

For For-Profit Entities, the Cost Principles contained in 48 CFR 31.2 (Contracts with Commercial Organizations) must be followed in lieu of the Cost principles contained in 2 CFR 200.400 through 200.475, except that patent prosecution costs are not allowable unless specifically authorized in the award document. This applies to For-Profit entities whether they are recipients or subrecipients.

§910.354 Payment.

(a) For-Profit Recipients are an exception to 2 CFR 200.305(b)(1) which requires that non-Federal entities be paid in advance as long as certain conditions are met.

(b) For For-Profit Recipients who are paid directly by DOE, reimbursement is the preferred method of payment. Under the reimbursement method of payment, the Federal awarding agency must reimburse the non-Federal entity for its actual cash disbursements. When the reimbursement method is used, the Federal awarding agency must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency reasonably believes the request to be improper.

§910.356 Audits.

See Subpart F of this part (Sections 910.500 through 910.521) for specific DOE regulations which apply to audits of DOE's For-Profit Recipients. For-Profit

entities are an exception to the Single Audit requirements contained in Subpart F of 2 CFR 200 and therefore the regulations contained in 2 CFR 910 Subpart F apply instead.

§910.358 Profit or fee for SBIR/STTR.

(a) As authorized by 2 CFR 200.400 (g), DOE may expressly allow non-federal entities to earn a profit or fee resulting from Federal financial assistance.

(b) DOE allows a profit or fee to be paid under two of its financial assistance programs only: Small Business Innovation Research (SBIR) and Small Business Technology Transfer Research (STTR).

(c) Awards under these programs will contain a specific provision which allows a profit or fee to be paid.

(d) Profit or Fee is unallowable for all other DOE programs which award grants and cooperative agreements.

§910.360 Real property and equipment.

(a) *Prior approvals for acquisition with Federal funds.* Recipients may purchase real property or equipment with an acquisition cost per unit of \$5,000 or more in whole or in part with Federal funds only with the prior written approval of the contracting officer or in accordance with express award terms.

(b) *Title.* Unless a statute specifically authorizes and the award specifies that title to property vests unconditionally in the recipient, title to real property or equipment vests in the recipient, subject to all terms and conditions of the award and that the recipient shall:

(1) Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the real property or equipment is no longer needed for the purposes of the project, as may be determined by the contracting officer;

(2) Not encumber or permit any encumbrance on the real property or equipment without the prior written approval of the contracting officer;

(3) Use and dispose of the real property or equipment in accordance with paragraphs (e), (f), and (g) of this section; and

(4) Properly record, and consent to the Department's ability to properly record if the recipient fails to do so,

UCC financing statement(s) for all equipment purchased with Federal funds (Financial assistance awards made under the Small Business Innovation Research/Small Business Technology Transfer (SBIR/STTR) program are exempt from this requirement unless otherwise specified within the grant agreement); such a filing is required when the Federal share of the financial assistance agreement is more than \$1,000,000, and the Contracting Officer may require it in his or her discretion when the Federal share is less than \$1,000,000. These financing statement(s) must be approved in writing by the contracting officer prior to the recording, and they shall provide notice that the recipient's title to all equipment (not real property) purchased with Federal funds under the financial assistance agreement is conditional pursuant to the terms of this section, and that the Government retains an undivided reversionary interest in the equipment. The UCC financing statement(s) must be filed before the contracting officer may reimburse the recipient for the Federal share of the equipment unless otherwise provided for in the relevant financial assistance agreement. The recipient shall further make any amendments to the financing statements or additional recordings, including appropriate continuation statements, as necessary or as the contracting officer may direct.

(c) *Remedies.* If the recipient fails at any time to comply with any of the conditions or requirements of paragraph (b) of this section, then the contracting officer may:

(1) Notify the recipient of noncompliance in accordance with 2 CFR 200.338, which may lead to suspension or termination of the award;

(2) Impose special award conditions pursuant to 2 CFR 200.205 and 200.207 as amended by 2 CFR 910.372;

(3) Issue instructions to the recipient for disposition of the property in accordance with paragraph (g) of this section;

(4) In the case of a failure to properly record UCC financing statement(s) in accordance with paragraph (b)(4) of this section, effect such a recording; and

(5) Apply other remedies that may be legally available.

(d) *Title to and Federal interest in real property or equipment offered as cost-share.* As provided in 2 CFR 200.306(h), depending upon the purpose of the Federal award, a recipient may offer the fair market value of real property or equipment that is purchased with recipient's funds or that is donated by a third party to meet a portion of any required cost sharing or matching. If a resulting award includes such property as a portion of the recipient's cost share, the recipient holds conditional title to the property and the Government has an undivided reversionary interest in the share of the property value equal to the Federal participation in the project. The property is treated as if it had been acquired in part with Federal funds, and is subject to the provisions of paragraph (b) of this section and to the provisions of 2 CFR 200.311 and 200.313.

(e) *Insurance.* Recipients must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient.

(f) *Additional uses during and after the project period.* Unless a statute and the award terms expressly provide for the vesting of unconditional title to real property or equipment with the recipient, the real property or equipment acquired wholly or in part with Federal funds is subject to the following:

(1) During the Project Period, the recipient must make real property and equipment available for use on other projects or programs, if such other use does not interfere with the work on the project or program for which the real property or equipment was originally acquired. Use of the real property or equipment on other projects is subject to the following order of priority:

(i) Activities sponsored by DOE grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts or activities not sponsored by any Federal agency. If so

Department of Energy

§910.362

used, use charges must be assessed to those activities. For real property or equipment, the use charges must be at rates equivalent to those for which comparable real property or equipment may be leased.

(2) After Federal funding for the project ceases, or if, as may be determined by the contracting officer, the real property or equipment is no longer needed for the purposes of the project, or if the recipient suspends work on the project, the recipient may use the real property or equipment for other projects, if:

(i) There are Federally sponsored projects for which the real property or equipment may be used;

(ii) The recipient obtains written approval from the contracting officer to do so. The contracting officer must ensure that there is a formal change of accountability for the real property or equipment to a currently funded Federal award; and

(iii) The recipient's use of the real property or equipment for other projects is in the same order of priority as described in paragraph (e)(1) of this section.

(iv) If the only use for the real property or equipment is for projects that have no Federal sponsorship, the recipient must proceed with disposition of the real property or equipment in accordance with paragraph (g) of this section.

(g) *Disposition.* (1) If, as determined by the contracting officer, an item of real property or equipment is no longer needed for Federally sponsored projects, or if the recipient has suspended work on the project, the recipient has the following options:

(i) If the property is equipment with a current per unit fair market value of less than \$5,000, it may be retained, sold, or otherwise disposed of with no further obligation to DOE.

(ii) If the property is equipment (rather than real property) and with the written approval of the contracting officer, the recipient may replace it with an item that is needed currently for the project by trading in or selling to offset the costs of the replacement equipment.

(iii) The recipient may elect to retain title, without further obligation to the

Federal Government, by compensating the Federal Government for that percentage of the current fair market value of the real property or equipment that is attributable to the Federal participation in the project.

(iv) If the recipient does not elect to retain title to real property or equipment or does not request approval to use equipment as trade-in or offset for replacement equipment, the recipient must request disposition instructions from the responsible agency.

(2) If a recipient requests disposition instructions, the contracting officer must:

(i) For either real property or equipment, issue instructions to the recipient for disposition of the property no later than 120 calendar days after the recipient's request. The contracting officer's options for disposition are to direct the recipient to:

(A) Transfer title to the real property or equipment to the Federal Government or to a third party designated by the contracting officer provided that, in such cases, the recipient is entitled to compensation for its attributable percentage of the current fair market value of the real property or equipment, plus any reasonable shipping or interim storage costs incurred; or

(B) Sell the real property or equipment and pay the Federal Government for that percentage of the current fair market value of the property that is attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). If the recipient is authorized or required to sell the real property or equipment, the recipient must use competitive procedures that result in the highest practicable return.

(3) If the contracting officer fails to issue disposition instructions within 120 calendar days of the recipient's request, the recipient must dispose of the real property or equipment through the option described in paragraph (g)(2)(i)(B) of this section.

[80 FR 53237, Sept. 3, 2015]

§910.362 Intellectual property.

(a) *Scope.* This section sets forth the policies with regard to disposition of